

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

In re: OHIO EXECUTION
PROTOCOL LITIGATION,

: Case No. 2:11-cv-1016

District Judge Edmund A. Sargus, Jr.
Magistrate Judge Michael R. Merz

This Order relates to Plaintiff James Frazier

ORDER REGARDING MOTION TO QUASH

This case is before the Court on non-Party Ohio State University Wexner Medical Center’s (“OSUWMC”) Motion to Quash the Subpoena *Duces Tecum* propounded by Plaintiff James Frazier on November 12, 2019 (ECF No. 2659). OSUWMC argues that the medical records sought by Frazier’s counsel are protected by the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, and that OSUWMC has received neither an order from this Court nor the “satisfactory assurance” of Frazier himself such that disclosure is allowed under the applicable regulations (Motion, ECF No. 2659, PageID 131758-60, citing 45 C.F.R. § 164.512(e)(1)(i-ii)). Thus, OSUWMC argues that the Court is required to quash the subpoena. *Id.* at PageID 131753, citing Fed.R.Civ.P. 45(d)(3)(A).

Unlike Rule 37, which governs in part discovery requests propounded upon parties, Rule 45 does not require the third party to confer with the subpoenaing party, or otherwise attempt amicably to resolve or narrow the scope of the dispute, prior to filing a motion to quash. The Court is aware that there has been correspondence between Frazier’s counsel and general counsel for

OSUWMC (*see, e.g.*, ECF Nos. 2633-1, 2633-2, and 2663-3). However, there is no indication that trial counsel for Frazier and outside counsel for OSUWMC have conferred in an attempt to provide the “satisfactory assurance” required before OSUWMC, as a covered entity under HIPAA, may disclose Frazier’s protected health information. 45 C.F.R. § 164.512(e)(1)(ii). Thus, trial counsel for Frazier and counsel of record for OSUWMC are ORDERED to confer and attempt to resolve or narrow the scope of the disagreement prior to December 3, 2019, the date upon which Frazier must file any memorandum in opposition to the Motion. S.D. Ohio Civ.R. 7.2(a)(2). OSUWMC’s obligation to comply with the subpoena is SUSPENDED until further order by this Court.

November 26, 2019.

s/ *Michael R. Merz*
United States Magistrate Judge